

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 260

August 21, 1964

## EXEMPTION: HOMESTEAD SURVIVAL ON DIVORCE

### Syllabus:

Taxpayers were married in 1947. Real property was acquired in 1950 and the deed was recorded showing ownership by taxpayers as joint tenants. On July 16, 1952, a declaration of homestead as a married person head of family was filed. In 1955, the husband was convicted of a felony. He was released on bail pending the outcome of the appeal of his conviction. When the conviction was affirmed he fled to Mexico.

The wife sued for a divorce based upon the felony conviction and was granted a final decree on December 15, 1958. In her complaint she stated the real property in question was community property. This is the only property mentioned in the divorce file. The property was awarded to the wife in the divorce decree. At the time of the issuance of the final decree the wife supported two minor children aged nine and five. On January 13, 1959, she filed another declaration of homestead on the same property as a single person head of family, listing the value of the property as \$15,000.

Taxpayers have an unpaid liability including interest to October 31, 1959, for the year 1950. Our lien was recorded May 18, 1954. The only prior encumbrance is a first deed of trust to secure the purchase money loan on which an unpaid balance remains.

(1) Does the homestead exemption survive divorce in this situation?

(2) What is the effect of the second declaration of homestead?

The property involved here is community property, since the divorce decree established it as such. Section 146 of the Civil Code gives the divorce court the power to assign a homestead created out of community property to the party to whom the divorce is awarded, unless the ground for divorce is incurable insanity.

There is no question that a homestead exemption survives divorce when the rights of minor children are involved. Lang v. Lang, 182 Cal. 765 (1920). There is also authority that a homestead exemption survives divorce when the rights of minor children are not involved. California Bank v. Schlesinger, 159 Cal. App. 2d Supp. 854 (1958).

Where a divorce decree is silent with regard to the disposition of property and homestead rights, however, the cases are not entirely clear. Several cases hold that the homestead exemption ceases on divorce in these circumstances Zonone v. Sprague, 16 Cal. App. 333 (1911). In the Lang case, supra, the court pointed out, however, that in some states the homestead exemption survives divorce, even when the divorce decree is silent on these matters, if the rights of minor children are involved.

The facts of the instant case are stronger than those referred to in the Lang case. Here, not only are the rights of minor children involved but the court also actually assigned the property to the wife, thus demonstrating that it had jurisdiction over the property. If the homestead would survive when the divorce decree is silent as to property rights, it most certainly will survive when the court has transferred the property but merely neglected to transfer the homestead. Under the circumstances, the first homestead survives the divorce.

A second declaration of homestead does not constitute an abandonment of the first homestead. Towers v. Curry, 247 Fed. 2d 738 (1957). In the present situation the second declaration merely clarifies the record by modifying it to agree with the actual situation.